



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11961/2017

**THE IMMIGRATION ACTS**

Decided without a hearing  
On 7 October 2021

Decision & Reasons Promulgated  
On 12 November 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

AM  
(ANONYMITY DIRECTION CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**DECISION AND REASONS**

1. By my decision promulgated on 24 January 2020 I set aside the decision of the First-tier Tribunal. I then, by my decision promulgated on 16 April 2020, remade the decision of the First-tier Tribunal in part. I now continue (and conclude) the remaking of the First-tier Tribunal's decision.

**Background**

2. In my decision promulgated on 16 April 2020, I found that the appellant, a stateless Palestinian who was habitually resident in Lebanon before coming to the UK in 2016, is (a) gay; (b) would either live as an openly gay man or be discreet in order to avoid persecution in Lebanon; and (c) would be at risk from his uncle, who is a member of the Hezbollah, in his home area. I decided to adjourn the hearing, part heard, as

neither party was adequately prepared to address me on relocation to Beirut. I identified the following issues as remaining to be determined:

- (a) the position of, and risk faced by, gay men in Beirut;
  - (b) whether the appellant would be at risk in Beirut from his uncle, who is a member of Hezbollah; and
  - (c) any other issues relevant to the reasonableness of the appellant relocating to Beirut.
3. At a hearing on 4 December 2020 I adjourned the matter, at the request of the respondent, in order for the appellant to obtain up-to-date evidence from Dr Whittaker Howe on his mental health. On 2 June 2021 I again adjourned the matter, this time at the request of the appellant (with the respondent's agreement), because the respondent filed detailed written submissions shortly before the hearing (on 1 June 2021) which the appellant's representative stated that she had not had time to consider and which, in her view, necessitated the obtaining of further evidence from Dr Whittaker Howe. The representatives of both the appellant and respondent proposed that, after further evidence and submissions were submitted, I should decide the appeal without a hearing. I agreed to do so, as I was satisfied that that it was consistent with the overriding objective, as expressed in rule 2, to accede to the wishes of the parties and decide the remaining issues without a hearing.
4. In accordance with the directions I gave on 2 June 2021, the appellant submitted an addendum report by Dr Whittaker Howe. He also submitted further written submissions. The respondent has confirmed that she is content to rely on her submissions of 1 June 2021.
5. The issue for me to determine is whether the appellant can be expected to relocate to Beirut. In order to answer this, the following questions need to be determined:
- (a) The first question is whether there is a real risk of the appellant being persecuted in Beirut. The appellant claims that there are two distinct reasons he is at risk of persecution in Beirut. These are:
    - (i) he is an openly gay man; and
    - (ii) his uncle, who is in the Hezbollah, will find and then kill or seriously injure him.
  - (b) The second question, which is only necessary to consider if the first question is answered in the negative, is whether the appellant can reasonably be expected to relocate to Beirut. This requires a holistic assessment encompassing all relevant considerations pertaining to him in Lebanon

## **Findings of Fact**

6. The following findings of fact were either made by me in my previous decision (promulgated on 16 April 2020) or are not in dispute. They are that:
  - (a) The appellant is a Palestinian who was born and grew up in the Rashidieh refugee camp in southern Lebanon. He has family who live in that part of Lebanon.
  - (b) He is openly gay.
  - (c) His uncle is a member of Hezbollah. Upon discovering that the appellant is gay, his uncle attacked him, causing injuries that required hospitalisation for 20 days. The appellant believes that he would be at risk from his uncle if he were to return to Lebanon (and even if he relocates to Beirut).
  
7. The appellant's mental health is an area of contention. The appellant relies on a report (and addendum report) by a clinical psychologist, Dr Whittaker Howe. Dr Whittaker Howe expresses the view that the appellant suffers from severe depression and anxiety. She describes him as presenting with reduced motivation, persistent fatigue and cognitive disturbances. In her view, the appellant's mental health significantly affects – and impedes- all aspects of his life.
  
8. Mr Clarke's submissions make a number of valid criticisms of the report. These include that (a) Dr Whittaker Howe stated in paragraph 37 of her report dated 12 February 2021 that there had been a significant increase in dose of the appellant's medication when, in fact, as she accepts in her letter of 9 July 2021, there had just been a change in medication; and (b) the report appears to make assumptions, which are not consistent with the objective evidence, about the lack of treatment available in Beirut. Although I share Mr Clarke's reservations about the report, I am satisfied that the evidence before me, which includes a detailed letter of support from Ms Hartley of the UK Lesbian and Gay Immigration Program (UKLGIG), as well as some NHS correspondence, establishes, to the requisite low standard of proof, that the appellant suffers from depression and anxiety, although not to a severe extent.

## **Risk of Persecution in Beirut**

### *Risk as a gay man*

9. The appellant submitted a report by an expert on the Middle East, Dr Fatah, to establish that gay men in Beirut face persecution. Dr Fatah states that although Beirut is amongst the most tolerant cities in the Middle East for gay men, and has a gay nightlife, this must be understood in the context of a region (and country) where hostility to gay men is prevalent. He referred to a survey showing only 6% of Lebanese felt that homosexuality was acceptable.

10. Dr Fatah explained that article 534 the Lebanese penal code prohibits sexual acts “contrary to the laws of nature” and whilst some court rulings have concluded this is not applicable to homosexuality, gay men in Lebanon have been convicted under it and may be punished by up to one year in prison. Dr Fatah noted that there were 76 arrests in 2016 under article 534 and there are reports of the article’s increasing use. He also notes the use of another penal provision (article 521, which concerns public indecency) to target LGBT individuals. He also stated that although anal examination to determine if a person is gay was banned in 2012, there are reports of this occurring.
11. Dr Fatah also stated that police raid and suppress LGBT events and spaces, and gay friendly nightclubs impose strict restrictions. He noted that in 2017 a gay pride event took place in Beirut, but it was not possible to repeat it due to pressures on organisers.
12. Relying on Dr Fatah’s report, Ms Daykin, on behalf of the appellant, in her written submissions, states that Beirut does not provide a place of safety for the appellant as he would be at risk of harassment and abuse, could not depend on state protection, and would face a risk of arrest, imprisonment and ill-treatment from the police and security forces.
13. Mr Clarke, on behalf of the respondent, argues in his written submissions that the difficulties and discrimination faced by gay men in Beirut, as described by Dr Fatah, do not meet the threshold of persecution/serious harm. He referred to recent authorities *YD (Algeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1683 and *BF (Albania) v The Secretary of State for the Home Department* [2019] EWCA Civ 1781 which confirm that persecution is a high threshold and that it is not sufficient, to establish a risk of persecution, to show that homosexuality is unlawful. Mr Clarke argues that the evidence of Dr Fatah is that Beirut has an active gay culture, there are very few arrests of gay men, the police and judiciary are generally tolerant of gay men or activities of gay organisations (other than large events, such as gay pride, where there is considerable public pressure). With respect to the practice of anal examinations, Dr Clarke notes that this is unlawful and the evidence of Dr Fatah was that it occurs rarely if at all in Beirut.
14. I agree with Mr Clarke. The expert and objective evidence before me does not support the conclusion that gay men are persecuted in Beirut. Although there are laws prohibiting sexual acts “contrary to the laws of nature” and “public indecency”, the evidence indicates that these are rarely used against gay men, and that when they are it is most often as an additional charge where a person is of interest to the authorities for another reason. There have been incidences of “anal examinations” but the evidence referred to by Dr Fatah indicates that this is extremely rare in Beirut. Within the confines of Beirut, a gay man can live openly without a fear of violence or abuse. That said, it is also the case that gay men face very significant societal disapproval outside of the confines of a very small geographical area. As an openly gay man, it is reasonably likely that the appellant will face hostility and discrimination. In my view, although being gay does not make it unsafe for the

appellant to relocate to Beirut, it will make his integration into the city more challenging.

***Risk from the appellant's uncle***

15. Dr Fatah states in his report that if the appellant's uncle is an influential member of Hezbollah he would be able to use his influence to locate the appellant. The burden lies with the appellant to establish his case, and I am not satisfied that he has established that it is reasonably likely that his uncle is an influential member of Hezbollah. I therefore do not accept that the appellant faces a risk of harm from his uncle in Beirut.

**Reasonableness of Relocation to Beirut**

16. The following factors are of particular relevance to the reasonableness of the appellant relocating to Beirut:
- (a) First, as an openly gay man the appellant is reasonably likely to face hostility and discrimination which will make establishing himself in, and integrating into, Beirut difficult.
  - (b) Second, he will not have any family support in Beirut. His family live in southern Lebanon and are unlikely to be able to provide him with any support or assistance in Beirut.
  - (c) Third, he suffers from depression and anxiety. The evidence before me does not establish that he has significant mental health problems, but the depression and anxiety are factors that will make life more challenging.
  - (d) Fourth, as a Palestinian, it is reasonably likely that the appellant will face additional difficulties in Beirut. Dr Fatah sets out in his report examples of discrimination faced by Palestinians in areas such as housing and employment. Mr Clarke draws attention to objective evidence indicating that restrictions on employment have been removed and that Palestinian refugees in Beirut are able to find employment. I agree with Mr Clarke's observations but they do not undermine the overall conclusion by Dr Fatah, which is that Palestinians in Beirut are relatively disadvantaged.
  - (e) Fifth, the appellant believes that he will be at risk from his uncle when in Beirut. Although I have rejected the argument that this fear is objectively well founded, the appellant's subjective belief is real, and it is reasonably likely to impact his mental health as well as his capacity to integrate and develop a sustainable life in Beirut.
17. None of the five factors identified above would, on its own, be sufficient to establish that internal relocation would be unduly harsh or unreasonable. However, it is necessary to consider the factors cumulatively. The combination of being gay and Palestinian, as well as having mild mental health problems, no family support and a

continual fear that his uncle might locate him, means that it is reasonably likely that the appellant will face particularly challenging circumstances in Beirut. Having considered all of the appellant's circumstances together – and having had regard to the guidance given in paragraph 61 of *AS (Afghanistan) v Secretary of State for the Home Department* [2019] EWCA Civ 873 – I am satisfied that in this case it is not reasonable to expect the appellant to relocate to Beirut and it would be unduly harsh to expect him to do so.

**Notice of Decision**

18. The appeal is allowed on protection grounds.

Signed



Upper Tribunal Judge Sheridan

Dated: 7 October 2021